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Attorneys for Defendant/Cross-Defendant
MCINTOSH & ASSOCIATES ENGINEERING,
INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Adavco, Inc., a California corporation

Plaintiff,

v.

Deertrail Development LLC, a
California limited liability company,
New Gen Engineering Group, Inc., a
California corporation, McIntosh &
Associates Engineering, Inc., a
California corporation, Does 1-10.

Defendants.

CASE NO. 1:23-cv-00695-JLT-SKO

Assigned to:

Hon. Jennifer L. Thurston (presiding)
Hon. Sheila K. Oberto (referral)

ANSWER BY MCINTOSH &
ASSOCIATES ENGINEERING, INC.
TO ADAVCO, INC.'S COMPLAINT

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant and
Cross-defendant McIntosh, INC. (hereinafter "McIntosh") files this Original
Answer to the Amended Complaint of ADAVCO, INC. (hereinafter "Adavco"),
as follows:

I. ANSWER

1. Answering Paragraph 1: McIntosh denies each and every allegation
contained therein generally and specifically, and each and every part thereof,
related to McIntosh. As to the remaining allegations, including allegations as to
other defendants, McIntosh alleges that it does not have sufficient information or
belief on the subject to enable it to answer any of the allegations in those

1 paragraphs and, basing its denial on that ground, denies each and every allegation
2 contained therein generally and specifically in each and every part thereof.

3 2. Answering Paragraph 2: McIntosh denies each and every allegation
4 contained therein generally and specifically, and each and every part thereof,
5 related to McIntosh. As to the remaining allegations, including allegations as to
6 other defendants, McIntosh alleges that it does not have sufficient information or
7 belief on the subject to enable it to answer any of the allegations in those
8 paragraphs and, basing its denial on that ground, denies each and every allegation
9 contained therein generally and specifically in each and every part thereof.
10 Without waiver of the preceding general denial, this answering defendant admits
11 that that this court has subject matter jurisdiction over the copyright claims in
12 this action.

13 3. Answering Paragraph 3: McIntosh denies each and every allegation
14 contained therein generally and specifically, and each and every part thereof,
15 related to McIntosh. As to the remaining allegations, including allegations as to
16 other defendants, McIntosh alleges that it does not have sufficient information or
17 belief on the subject to enable it to answer any of the allegations in those
18 paragraphs and, basing its denial on that ground, denies each and every allegation
19 contained therein generally and specifically in each and every part thereof.
20 Without waiver of the preceding general denial, this answering defendant admits
21 that that this court has personal jurisdiction over this answering defendant and
22 that this defendant previously did business in California, up to the death of Roger
23 McIntosh on or about June 10, 2021 and sale of his assets as of February 1, 2022.

24 4. Answering Paragraph 4: McIntosh denies each and every allegation
25 contained therein generally and specifically, and each and every part thereof,
26 related to McIntosh. As to the remaining allegations, including allegations as to
27 other defendants, McIntosh alleges that it does not have sufficient information or
28 belief on the subject to enable it to answer any of the allegations in those

1 paragraphs and, basing its denial on that ground, denies each and every allegation
2 contained therein generally and specifically in each and every part thereof.

3 Without waiver of the preceding general denial, this answering defendant admits
4 that that this court has personal jurisdiction over this answering defendant and
5 that this defendant previously did business in California, up to the death of Roger
6 McIntosh on or about June 10, 2021 and sale of his assets as of February 1, 2022.

7 5. Answering Paragraph 5: McIntosh denies each and every allegation
8 contained therein generally and specifically, and each and every part thereof,
9 related to McIntosh. As to the remaining allegations, including allegations as to
10 other defendants, McIntosh alleges that it does not have sufficient information or
11 belief on the subject to enable it to answer any of the allegations in those
12 paragraphs and, basing its denial on that ground, denies each and every allegation
13 contained therein generally and specifically in each and every part thereof.

14 6. Answering Paragraph 6: McIntosh denies each and every allegation
15 contained therein generally and specifically, and each and every part thereof,
16 related to McIntosh. As to the remaining allegations, including allegations as to
17 other defendants, McIntosh alleges that it does not have sufficient information or
18 belief on the subject to enable it to answer any of the allegations in those
19 paragraphs and, basing its denial on that ground, denies each and every allegation
20 contained therein generally and specifically in each and every part thereof.

21 7. Answering Paragraph 7: McIntosh denies each and every allegation
22 contained therein generally and specifically, and each and every part thereof,
23 related to McIntosh. Without waiver of the preceding general denial, this
24 answering defendant admits that that this court has personal jurisdiction over this
25 answering defendant and that this defendant previously did business in
26 California, up to the death of Roger McIntosh on or about June 10, 2021 and sale
27 of his assets as of February 1, 2022. As to the remaining allegations, including
28 allegations as to other defendants, McIntosh alleges that it does not have

1 sufficient information or belief on the subject to enable it to answer any of the
2 allegations in those paragraphs and, basing its denial on that ground, denies each
3 and every allegation contained therein generally and specifically in each and
4 every part thereof.

5 8. Answering Paragraph 8: McIntosh denies each and every allegation
6 contained therein generally and specifically, and each and every part thereof,
7 related to McIntosh. As to the remaining allegations, including allegations as to
8 other defendants, McIntosh alleges that it does not have sufficient information or
9 belief on the subject to enable it to answer any of the allegations in those
10 paragraphs and, basing its denial on that ground, denies each and every allegation
11 contained therein generally and specifically in each and every part thereof.

12 9. Answering Paragraph 9: McIntosh denies each and every allegation
13 contained therein generally and specifically, and each and every part thereof,
14 related to McIntosh. As to the remaining allegations, including allegations as to
15 other defendants, McIntosh alleges that it does not have sufficient information or
16 belief on the subject to enable it to answer any of the allegations in those
17 paragraphs and, basing its denial on that ground, denies each and every allegation
18 contained therein generally and specifically in each and every part thereof.

19 10. Answering Paragraph 10: McIntosh denies each and every
20 allegation contained therein generally and specifically, and each and every part
21 thereof, related to McIntosh. As to the remaining allegations, including
22 allegations as to other defendants, McIntosh alleges that it does not have
23 sufficient information or belief on the subject to enable it to answer any of the
24 allegations in those paragraphs and, basing its denial on that ground, denies each
25 and every allegation contained therein generally and specifically in each and
26 every part thereof.

27 11. Answering Paragraph 11: McIntosh denies each and every
28 allegation contained therein generally and specifically, and each and every part

1 thereof, related to McIntosh. As to the remaining allegations, including
2 allegations as to other defendants, McIntosh alleges that it does not have
3 sufficient information or belief on the subject to enable it to answer any of the
4 allegations in those paragraphs and, basing its denial on that ground, denies each
5 and every allegation contained therein generally and specifically in each and
6 every part thereof.

7 12. Answering Paragraph 12: McIntosh denies each and every
8 allegation contained therein generally and specifically, and each and every part
9 thereof, related to McIntosh. As to the remaining allegations, including
10 allegations as to other defendants, McIntosh alleges that it does not have
11 sufficient information or belief on the subject to enable it to answer any of the
12 allegations in those paragraphs and, basing its denial on that ground, denies each
13 and every allegation contained therein generally and specifically in each and
14 every part thereof.

15 13. Answering Paragraph 13: McIntosh denies each and every
16 allegation contained therein generally and specifically, and each and every part
17 thereof, related to McIntosh. As to the remaining allegations, including
18 allegations as to other defendants, McIntosh alleges that it does not have
19 sufficient information or belief on the subject to enable it to answer any of the
20 allegations in those paragraphs and, basing its denial on that ground, denies each
21 and every allegation contained therein generally and specifically in each and
22 every part thereof.

23 14. Answering Paragraph 14: McIntosh denies each and every
24 allegation contained therein generally and specifically, and each and every part
25 thereof, related to McIntosh. As to the remaining allegations, including
26 allegations as to other defendants, McIntosh alleges that it does not have
27 sufficient information or belief on the subject to enable it to answer any of the
28 allegations in those paragraphs and, basing its denial on that ground, denies each

1 and every allegation contained therein generally and specifically in each and
2 every part thereof.

3 15. Answering Paragraph 15: McIntosh denies each and every
4 allegation contained therein generally and specifically, and each and every part
5 thereof, related to McIntosh. As to the remaining allegations, including
6 allegations as to other defendants, McIntosh alleges that it does not have
7 sufficient information or belief on the subject to enable it to answer any of the
8 allegations in those paragraphs and, basing its denial on that ground, denies each
9 and every allegation contained therein generally and specifically in each and
10 every part thereof.

11 16. Answering Paragraph 16: McIntosh denies each and every
12 allegation contained therein generally and specifically, and each and every part
13 thereof, related to McIntosh. As to the remaining allegations, including
14 allegations as to other defendants, McIntosh alleges that it does not have
15 sufficient information or belief on the subject to enable it to answer any of the
16 allegations in those paragraphs and, basing its denial on that ground, denies each
17 and every allegation contained therein generally and specifically in each and
18 every part thereof.

19 17. Answering Paragraph 17: McIntosh denies each and every
20 allegation contained therein generally and specifically, and each and every part
21 thereof, related to McIntosh. As to the remaining allegations, including
22 allegations as to other defendants, McIntosh alleges that it does not have
23 sufficient information or belief on the subject to enable it to answer any of the
24 allegations in those paragraphs and, basing its denial on that ground, denies each
25 and every allegation contained therein generally and specifically in each and
26 every part thereof.

27 18. Answering Paragraph 18: McIntosh denies each and every
28 allegation contained therein generally and specifically, and each and every part

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1 thereof, related to McIntosh. As to the remaining allegations, including
2 allegations as to other defendants, McIntosh alleges that it does not have
3 sufficient information or belief on the subject to enable it to answer any of the
4 allegations in those paragraphs and, basing its denial on that ground, denies each
5 and every allegation contained therein generally and specifically in each and
6 every part thereof. Without waiver of the preceding general denial, McIntosh did
7 no construction.

8 19. Answering Paragraph 19: McIntosh denies each and every
9 allegation contained therein generally and specifically, and each and every part
10 thereof, related to McIntosh. As to the remaining allegations, including
11 allegations as to other defendants, McIntosh alleges that it does not have
12 sufficient information or belief on the subject to enable it to answer any of the
13 allegations in those paragraphs and, basing its denial on that ground, denies each
14 and every allegation contained therein generally and specifically in each and
15 every part thereof.

16 20. Answering Paragraph 20: McIntosh denies each and every
17 allegation contained therein generally and specifically, and each and every part
18 thereof, related to McIntosh. As to the remaining allegations, including
19 allegations as to other defendants, McIntosh alleges that it does not have
20 sufficient information or belief on the subject to enable it to answer any of the
21 allegations in those paragraphs and, basing its denial on that ground, denies each
22 and every allegation contained therein generally and specifically in each and
23 every part thereof. Without waiver of the preceding general denial, McIntosh did
24 no construction.

25 21. Answering Paragraph 21: McIntosh denies each and every
26 allegation contained therein generally and specifically, and each and every part
27 thereof, related to McIntosh. As to the remaining allegations, including
28 allegations as to other defendants, McIntosh alleges that it does not have

1 sufficient information or belief on the subject to enable it to answer any of the
2 allegations in those paragraphs and, basing its denial on that ground, denies each
3 and every allegation contained therein generally and specifically in each and
4 every part thereof.

5 22. Answering Paragraph 22: McIntosh denies each and every
6 allegation contained therein generally and specifically, and each and every part
7 thereof, related to McIntosh. As to the remaining allegations, including
8 allegations as to other defendants, McIntosh alleges that it does not have
9 sufficient information or belief on the subject to enable it to answer any of the
10 allegations in those paragraphs and, basing its denial on that ground, denies each
11 and every allegation contained therein generally and specifically in each and
12 every part thereof.

13 23. Answering Paragraph 23: McIntosh denies each and every
14 allegation contained therein generally and specifically, and each and every part
15 thereof, related to McIntosh. As to the remaining allegations, including
16 allegations as to other defendants, McIntosh alleges that it does not have
17 sufficient information or belief on the subject to enable it to answer any of the
18 allegations in those paragraphs and, basing its denial on that ground, denies each
19 and every allegation contained therein generally and specifically in each and
20 every part thereof.

21 24. Answering Paragraph 24: McIntosh denies each and every
22 allegation contained therein generally and specifically, and each and every part
23 thereof, related to McIntosh. As to the remaining allegations, including
24 allegations as to other defendants, McIntosh alleges that it does not have
25 sufficient information or belief on the subject to enable it to answer any of the
26 allegations in those paragraphs and, basing its denial on that ground, denies each
27 and every allegation contained therein generally and specifically in each and
28 every part thereof.

1 25. Answering Paragraph 25: McIntosh denies each and every
2 allegation contained therein generally and specifically, and each and every part
3 thereof, related to McIntosh. As to the remaining allegations, including
4 allegations as to other defendants, McIntosh alleges that it does not have
5 sufficient information or belief on the subject to enable it to answer any of the
6 allegations in those paragraphs and, basing its denial on that ground, denies each
7 and every allegation contained therein generally and specifically in each and
8 every part thereof.

9 26. Answering Paragraph 26: McIntosh denies each and every
10 allegation contained therein generally and specifically, and each and every part
11 thereof, related to McIntosh. As to the remaining allegations, including
12 allegations as to other defendants, McIntosh alleges that it does not have
13 sufficient information or belief on the subject to enable it to answer any of the
14 allegations in those paragraphs and, basing its denial on that ground, denies each
15 and every allegation contained therein generally and specifically in each and
16 every part thereof.

17 27. Answering Paragraph 27: McIntosh denies each and every
18 allegation contained therein generally and specifically, and each and every part
19 thereof, related to McIntosh. As to the remaining allegations, including
20 allegations as to other defendants, McIntosh alleges that it does not have
21 sufficient information or belief on the subject to enable it to answer any of the
22 allegations in those paragraphs and, basing its denial on that ground, denies each
23 and every allegation contained therein generally and specifically in each and
24 every part thereof.

25 28. Answering Paragraph 28: McIntosh denies each and every
26 allegation contained therein generally and specifically, and each and every part
27 thereof, related to McIntosh. As to the remaining allegations, including
28 allegations as to other defendants, McIntosh alleges that it does not have

1 sufficient information or belief on the subject to enable it to answer any of the
2 allegations in those paragraphs and, basing its denial on that ground, denies each
3 and every allegation contained therein generally and specifically in each and
4 every part thereof.

5 29. Answering Paragraph 29: McIntosh denies each and every
6 allegation contained therein generally and specifically, and each and every part
7 thereof, related to McIntosh. As to the remaining allegations, including
8 allegations as to other defendants, McIntosh alleges that it does not have
9 sufficient information or belief on the subject to enable it to answer any of the
10 allegations in those paragraphs and, basing its denial on that ground, denies each
11 and every allegation contained therein generally and specifically in each and
12 every part thereof.

13 30. Answering Paragraph 30: McIntosh denies each and every
14 allegation contained therein generally and specifically, and each and every part
15 thereof, related to McIntosh. As to the remaining allegations, including
16 allegations as to other defendants, McIntosh alleges that it does not have
17 sufficient information or belief on the subject to enable it to answer any of the
18 allegations in those paragraphs and, basing its denial on that ground, denies each
19 and every allegation contained therein generally and specifically in each and
20 every part thereof.

21 31. Answering Paragraph 31: McIntosh denies each and every
22 allegation contained therein generally and specifically, and each and every part
23 thereof, related to McIntosh. As to the remaining allegations, including
24 allegations as to other defendants, McIntosh alleges that it does not have
25 sufficient information or belief on the subject to enable it to answer any of the
26 allegations in those paragraphs and, basing its denial on that ground, denies each
27 and every allegation contained therein generally and specifically in each and
28 every part thereof.

II. AFFIRMATIVE DEFENSES

32. FIRST AFFIRMATIVE DEFENSE (Fair Use). McIntosh asserts the affirmative defense of Fair Use pursuant to Section 107 of the Copyright Act.

33. SECOND AFFIRMATIVE DEFENSE (Indemnification). McIntosh asserts the affirmative defense of indemnification. McIntosh alleges that any damages or liability claimed by the plaintiff were caused by the actions or omissions of a third party, for which McIntosh is entitled to be indemnified by said third party. McIntosh further asserts that any recovery the plaintiff should by sought from the third party responsible for the alleged damages or liability.

34. THIRD AFFIRMATIVE DEFENSE (Contribution). McIntosh asserts the affirmative defense of contribution. McIntosh demands that if it is found liable for any damages or liability claimed by the plaintiff, such liability should be apportioned among other responsible parties who may be jointly liable. McIntosh seeks contribution from these other responsible parties to share in the payment of any damages or liability imposed by the court.

35. FOURTH AFFIRMATIVE DEFENSE (Principal-Agent Relationship). McIntosh asserts the affirmative defense of Principal-Agent Relationship. McIntosh alleges that at all times of the incident giving rise to the plaintiffs claims, McIntosh, was acting as an agent on behalf of a disclosed principal, Defendant Deertrail Development, LLC. McIntosh further contends that all actions taken were done so under the lawful instruction and authority of the controlling party in the principal-agent relationship, Defendant Deertrail Development, LLC.

36. FIFTH AFFIRMATIVE DEFENSE (Lack of Originality). McIntosh asserts the affirmative defense of Lack of Originality. McIntosh alleges that the allegedly infringed work lacks the requisite originality for copyright protection.

37. SIXTH AFFIRMATIVE DEFENSE (Copyright Misuse). McIntosh asserts the affirmative defense of Copyright Misuse. McIntosh alleges that

1 plaintiff has engaged in copyright misuse to stifle competition or exert control
2 beyond the scope of copyright law.

3 38. SEVENTH AFFIRMATIVE DEFENSE (Innocent Infringer
4 Defense). McIntosh asserts the affirmative defense of Innocent Infringement
5 under Section 504. McIntosh alleges that if infringement did occur, McIntosh
6 was only not aware that its use of the work infringed the plaintiffs copyright, but
7 also that it had no reason to believe that its acts constituted infringement.

8 39. EIGHTH AFFIRMATIVE DEFENSE (Estoppel). McIntosh asserts
9 the affirmative defense of Estoppel. McIntosh alleges that the plaintiff is barred
10 from asserting copyright infringement due to their prior conduct or
11 representations.

12 40. NINTH AFFIRMATIVE DEFENSE (Unclean Hands). McIntosh
13 asserts the affirmative defense of Unclean Hands. McIntosh alleges that the
14 plaintiff engaged in improper conduct, such as copyright infringement
15 themselves, which disqualifies them from seeking relief.

16 41. TENTH AFFIRMATIVE DEFENSE (First Amendment). McIntosh
17 asserts the affirmative defense of First Amendment protection. McIntosh alleges
18 that its actions are protected by the First Amendment's guarantee of freedom of
19 speech and right to freedom of expression.

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III. DEMAND FOR JURY TRIAL

42. Pursuant to Federal Rule of Civil Procedure 38 and Civil Local Rule 201, McIntosh demands a jury trial on all issues present in the First Amended Complaint that are triable by a jury.

Dated: January 3, 2024

MURTAUGH TREGLIA STERN &
DEILY LLP

Bv: _____


David A. Ericksen
Attorneys for Defendant/Cross-
Defendant
MCINTOSH & ASSOCIATES
ENGINEERING, INC.